IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 668 OF 1993

The Oriental Insurance
Company Limited ..Appellants

versus

1. Laxman Ramchandra Parkar
2. Smt. Indrayani Laxman Parkar
3. Kum. Sangita Laxman Parkar
4. Kum. Madhavi Laxman Parkar
5. Ajit M. Manekar
6. Tresslyn Benzal Fernandes ..Respondents

Mr. S. M. Mhamane for the Appellants.
None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 13TH JANUARY,2005

ORAL ORDER :

1. Heard counsel for the Appellants - Insurance company. Nobody is present for the respondents.

2. Respondent no.5 in this appeal was the owner of the car. He had given it for servicing to Resham Motors Pvt. Ltd. on 4.12.1985. He was to get his car back on 6.12.1985. On 6.12.1985 morning he

learnt that his car has met with an accident killing Narendra Parkar who was going on his motorcycle on the same day. The dependants of deceased Narendra filed their claim before MACT, Greater Mumbai and that claim was partly allowed. It was allowed against respondent No.2 and the Insurance company jointly and severally to the extent of Rs.76,800/- with interest at the rate of 12% per annum and claim against the owner respondent No.1 was disallowed. It is this order which is challenged by the insurance company in the present Appeal.

3. Counsel for the appellants Insurance Company contended that though it is an admitted fact that Maruti car of respondent No.5 was under cover by comprehensive insurance policy, there is no evidence that respondent No. 6 was the driver of Resham Motors Pvt. Ltd. He therefore contended that if the owner respondent No.5 had handed over his car for servicing / repairs to Resham Motors Pvt. Ltd. then it was separate and independent contract between the owner of the Resham Motors Pvt. Ltd. and unless and until it was proved either by the claimants or by the respondent no.5 that respondent No. 6 was the driver of Resham Motors Pvt. Ltd., no liability for the accident could be fastened against the Insurance Company. He also pointed out that even though owner examined himself, he could

not prove that respondent No. 6 was authorised by Resham Motors Pvt. Ltd. to drive the vehicle.

4. He also contended that it was obligatory upon the claimants to have made Resham Motors Pvt. Ltd. as party to their claim before MACT and according to him non joinder of a necessary party should have been considered, as fatal. Lastly he contended that if the owner is exonerated from his liability then there can be no liability against the insurance company. He also contended that out of all the respondents only mother could be considered as dependant of the deceased because under the provisions of Hindu Succession Act neither the father nor the sisters could be considered as legal heirs.

5. I have given my anxious consideration to the submissions made by the counsel for the appellants. A similar issue was directly involved before the Supreme Court and the said judgment is reported in **AIR 1988 Supreme Court 1332 Guru Govekar vs. Miss. Filomena F. Lobo and others.** The question was as under:

> **"The short question involved in this case is whether an insurer who has issued a policy insuring any person specified in the policy**

> **against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of a motor vehicle in a public place, is liable to pay compensation to such third party or to his or her legal representatives as the case may be when the liability arises when the motor vehicle is in the custody of a repairer."**

This is the same question that is involved in this case and the Tribunal has rightly relied upon the judgment of the Supreme Court and held that the insurer is liable to the victim of the accident or his dependants. No further discussion is necessary in this regard because the judgment of the Supreme Court is absolute clear.

6. It was also contended by the counsel for the appellants that there is no evidence on record produced either by the claimant or by the owner respondent no.5 that respondent no. 6 was the authorised agent of Resham Motors Pvt. Ltd. However, this submission is required to be rejected because owner Ajit Mukundrao Mankar examined himself as his witness. He has stated that on 6.12.1985 in the morning at about 9.00 a.m. he learnt about the

accident on phone from Mr. Purandare, Work Superintendent of Resham Motors Pvt. Ltd. After receiving the call he visited the workshop. The driver who caused the incident was not his employee but was the employee of Resham Motors Pvt. Ltd. To this part of the evidence, there is no cross examination by the Insurance Company at all of owner Respondent No.5. It was most natural on the part of the owner to go to garage Resham Motors Pvt. Ltd. and enquire about the accident and to know further details because it was his car handed over to them for necessary repairs as per the company's guidelines and therefore it was in the course of enquiry that he came to know that the respondent no. 6 was the employee of Resham Motors Pvt. Ltd. He has stated in his evidence that when he saw the car he found that it was reduced to a junk and therefore on 19.12.1985 he sent notice to Resham Motors Pvt. Ltd. in respect of the accident and about their responsibility. Similar notices were also sent through Advocate but none of them were attended to. It will be therefore clear that the claimants have not stated anything as to whether respondent no. 6 was driver of Resham Motors Pvt. Ltd. Respondent no.5 has stated that respondent no. 6 was the driver for Resham Motors Pvt. Ltd. to whom the car was entrusted for repairs / servicing . There is no crossexamination and no attempt is made to disprove

his testimony. Therefore the trial court was justified in holding the liability upon the insurance company.

7. It was also contended by counsel for the appellants that Resham Motors Pvt. Ltd. were necessary party. I do not find that Resham Motors Pvt. Ltd. were necessary parties though they might be the proper parties and in any case the claim of the claimant could not have been frustrated for non joinder of necessary parties i.e for non joinder of Resham Motors Pvt. Ltd.

8. Lastly, it was contended by the counsel for the appellants that if out of the four dependants father, mother and two sisters, only the mother was legal representative under the Hindu Succession Act and therefore entitled for compensation, then the compensation should have been reduced. I do not find any force in these arguments also. The loss of a young earning boy has been compensated for only Rs.76,800/=. Unfortunately and unnatural for the insurance company there is no cross appeal filed by the claimants. They appear to have remain contended with whatever was given to them by the court.

9. For all the aforesaid reasons, no interference is called for. Appeal dismissed with

no order as to costs.

13.1.2005 (D.G. DESHPANDE,J.)